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**AB-1716 Estate disposition.** (2021-2022)

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**Assembly Bill No. 1716**

**CHAPTER 29**

An act to amend Section 682.1 of the Civil Code, and to amend Sections 13109, 13110, 13113, 13117, 13204, 13205, 13208, 13211, and 13551 of, to add Sections 13100.5, 13109.5, 13110.5, 13113.5, 13114.5, 13202.5, 13204.5, 13205.5, 13208.5, and 13209 to, to repeal Sections 13112 and 13207 of, and to repeal and add Sections 13111 and 13206 of, the Probate Code, relating to probate.

[ Approved by Governor June 21, 2022. Filed with Secretary of State June 21, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1716, Maienschein. Estate disposition.

(1) Under existing law, upon the death of a person who is married or in a registered domestic partnership, half of the community property and quasi-community property belongs to the surviving spouse, unless the spouses have agreed in writing to divide the property in another manner. Existing law requires, with specified exceptions, that upon the death of a married person, the surviving spouse is personally liable for the debts of the deceased spouse. Under existing law, those debts are chargeable against the fair market value, as specified, of property including community property, quasi-community property, and separate property that passes to the surviving spouse when the deceased spouse dies intestate and the property passes "without administration."

This bill would specify that, in calculating the available amount of the community property, quasi-community property, and separate property that passes to the surviving spouse, "without administration" refers to property that passes to the surviving spouse without administration under the provisions relating to intestate succession. The bill would make a conforming change to include community property with a right of survivorship within the scope of the bill.

(2) Existing law establishes procedures that authorize a person to receive property from a decedent's estate without probate administration, including both personal property and real property of small value. Under existing law, when the decedent's estate is being administered, or going through intestate administration procedures, a person who receives property from an estate may be personally liable for the decedent's unsecured debts, or the transfer may be subject to the claim of a person with a superior right, as specified.

This bill would recast and revise various provisions relating to the transfer of property from a decedent's estate as described above, including generally identifying a person who takes property under the above circumstances as a "transferee" and defining other related terms. Among other changes, the bill would require a transferee to make restitution to a person with a superior right to the property, but with respect to the decedent's debt, the bill would instead make the transferee personally liable to the estate for a share of the decedent's debt, as prescribed. The bill would authorize a transferee to voluntarily return property to the estate for administration, as specified.

The bill would revise the treatment of property returned by the transferee to the estate that has produced income while in the transferee's possession, by requiring the value of that income to be returned to the estate if the income would have accrued to the state had the property not been transferred to the transferee.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** Section 682.1 of the Civil Code is amended to read:

**682.1.** (a) (1) Community property of spouses, when expressly declared in the transfer document to be community property with right of survivorship, and which may be accepted in writing on the face of the document by a statement signed or initialed by the grantees, shall, upon the death of one of the spouses, pass to the survivor, without administration, pursuant to the terms of the instrument, subject to the same procedures, as property held in joint tenancy. Prior to the death of either spouse, the right of survivorship may be terminated pursuant to the same procedures by which a joint tenancy may be severed.

(2) Part 1 (commencing with Section 5000) of Division 5 of the Probate Code and Chapter 2 (commencing with Section 13540), Chapter 3 (commencing with Section 13550), and Chapter 3.5 (commencing with Section 13560) of Part 2 of Division 8 of the Probate Code apply to this property.

(3) For the purposes of Chapter 3 (commencing with Section 13550) of Part 2 of Division 8 of the Probate Code, this property shall be treated as if it had passed without administration under Part 2 (commencing with Section 13500) of Division 8 of the Probate Code.

(b) This section does not apply to a joint account in a financial institution to which Part 2 (commencing with Section 5100) of Division 5 of the Probate Code applies.

(c) This section shall become operative on July 1, 2001, and shall apply to instruments created on or after that date.

### **SEC. 2.** Section 13100.5 is added to the Probate Code, to read:

**13100.5.** The following definitions apply for the purposes of this chapter:

(a) "Transferee" means a person to whom payment, delivery, or transfer of property is made under this chapter.

(b) "Transferred property" means property that is paid, delivered, or transferred pursuant to an affidavit or declaration executed under Section 13101.

(c) "Unsecured debts" includes, but is not limited to, a decedent's funeral expenses, expenses of a decedent's last illness, and wage claims.

### **SEC. 3.** Section 13109 of the Probate Code is amended to read:

**13109.** (a) A transferee is personally liable, to the extent provided in this section for the unsecured debts of the decedent. That debt may be enforced against the transferee in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the transferee may assert any defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7. Section 366.2 of the Code of Civil Procedure applies in an action under this section.

(b) The personal liability under subdivision (a) shall not exceed the fair market value of the transferred property at the time the affidavit or declaration is presented under this chapter, less the amount of any liens and encumbrances on the transferred property at that time, and less the amount of any payment made pursuant to subdivision (a) of Section 13110.

(c) A transferee is not liable under this section if the transferee has satisfied the requirements of Section 13109.5, 13110.5, or 13111.

### **SEC. 4.** Section 13109.5 is added to the Probate Code, to read:

**13109.5.** (a) If proceedings for the administration of the decedent's estate are commenced, a transferee is personally liable to the estate for a share of the decedent's unsecured debts.

(b) In calculating the transferee's share of liability under subdivision (a), the abatement rules provided in Part 4 (commencing with Section 21400) of Division 11 shall be applied, using all of the following assumptions:

(1) Transferred property shall be treated as if it had remained in the estate for administration.

(2) Any unsecured debts of the decedent that were paid by the transferee pursuant to Section 13109 shall be treated as if they were claims made against the decedent's estate.

(c) The personal representative shall provide a written statement of liability to the transferee, which specifies the amount that must be paid to the estate.

(d) The transferee is personally liable to the estate for the amount specified in the statement of liability. Any amount that the transferee paid pursuant to Section 13109 or 13110 shall be credited against the amount that the transferee owes the estate under this subdivision. If the amount that the transferee paid pursuant to Section 13109 or 13110 exceeds the amount specified in the written statement of liability, the estate shall reimburse the difference to the transferee. For the purposes of Section 11420, that reimbursement shall be deemed an expense of administration.

(e) The reasonable cost of proceeding under this section shall be reimbursed as an extraordinary service under Sections 10801 and 10811. The transferee is liable for the payment of that cost, which shall be separately identified in the statement of liability.

(f) A transferee is not liable under this section if the transferee has satisfied the requirements of Section 13110.5 or 13111.

**SEC. 5.** Section 13110 of the Probate Code is amended to read:

**13110.** (a) Except as provided in subdivision (b), a transferee is personally liable to any person having a superior right to the transferred property by testate or intestate succession from the decedent. Except as provided in subdivision (b), the personal liability established by this subdivision shall not exceed the sum of the following, less the amount of any payment made pursuant to Section 13109 or 13109.5:

(1) The fair market value of the transferred property at the time the affidavit or declaration is presented under this chapter, less the amount of any liens and encumbrances on the transferred property at that time.

(2) Income received from the property, if that income would have accrued to the estate had the property not been transferred to the transferee.

(3) If the property has been disposed of, interest on the fair market value of the transferred property from the date of disposition at the rate of 7 percent per annum. For the purposes of this paragraph, "fair market value of the transferred property" means the fair market value of the transferred property, determined as of the time of the disposition of the property, less the amount of any liens and encumbrances on the property at the time the property was paid, delivered, or transferred to the transferee.

(b) In addition to any other liability the transferee has under this section and Sections 13109, 13109.5, 13111, and 13113.5 a person who fraudulently secures the payment, delivery, or transfer of the decedent's property under this chapter is liable to the person having a superior right to that property by testate or intestate succession from the decedent for three times the fair market value of the property. For the purposes of this subdivision, the "fair market value of the property" is the fair market value of the property paid, delivered, or transferred to the person liable under this subdivision, valued as of the time the person liable under this subdivision presents the affidavit or declaration under this chapter to the holder of the decedent's property, less any liens and encumbrances on that property at that time.

(c) An action to impose liability under this section is forever barred three years after the affidavit or declaration is presented under this chapter to the holder of the decedent's property, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

(d) A transferee is not liable under subdivision (a) if the transferee has satisfied the requirements of Section 13110.5 or 13111.

**SEC. 6.** Section 13110.5 is added to the Probate Code, to read:

**13110.5.** (a) If proceedings for the administration of a decedent's estate are commenced, a transferee may voluntarily return transferred property to the decedent's estate for administration.

(b) The property to be restored to the estate under this section shall be reduced or increased as provided in Section 13113.5.

**SEC. 7.** Section 13111 of the Probate Code is repealed.

**SEC. 8.** Section 13111 is added to the Probate Code, to read:

**13111.** (a) If property is paid, delivered, or transferred to a transferee under this chapter, and the decedent's personal representative determines that another person has a superior right to the property by testate or intestate succession from the decedent, the personal representative may request that the transferred property be restored to the estate. Subject to subdivisions (b), (c), (d), (e), and (g) if the personal representative makes that request, the transferee is liable for all of the following:

(1) If the transferee still has the transferred property, restitution of the transferred property to the decedent's estate.

(2) If the transferee no longer has the transferred property, restitution to the decedent's estate of the fair market value of the transferred property plus interest from the date of disposition at the rate of 7 percent per annum on the fair market value of the transferred property. For the purposes of this paragraph, the "fair market value of the transferred property" is the fair market value of the transferred property, determined as of the time of the disposition of the transferred property, less the amount of any liens and encumbrances on the transferred property at the time the property was paid, delivered, or transferred to the person under this chapter.

(b) Subject to subdivision (c) and subject to any additional liability the transferee has under Sections 13109 to 13113.5, inclusive, if the transferee fraudulently secured the payment, delivery, or transfer of the decedent's property under this chapter, the transferee is liable under this section for restitution of three times the fair market value of the transferred property. For the purposes of this subdivision, the "fair market value of the transferred property" is the fair market value of the transferred property, determined as of the time the person liable under this subdivision presents the affidavit or declaration under this chapter, less the amount of any liens and encumbrances on the property at that time. Restitution provided under this subdivision shall first be used to pay the estate's cost of proceeding under this section, with the remainder paid to the person who has a superior right to the property by testate or intestate succession.

(c) The property and amount required to be restored to the estate under this section shall be reduced or increased as provided in Section 13113.5.

(d) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the decedent.

(e) An action to enforce the liability under this section is forever barred three years after presentation of the affidavit or declaration under this chapter to the holder of the decedent's property, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

(f) In the case of a nondomiciliary decedent, restitution under this section shall be made to the estate in an ancillary administration proceeding.

(g) A transferee is not liable under subdivision (a) if the transferred property was returned to the estate under Section 13110.5.

**SEC. 9.** Section 13112 of the Probate Code is repealed.

**SEC. 10.** Section 13113 of the Probate Code is amended to read:

**13113.** The remedies available under Sections 13109 to 13111, inclusive, are in addition to any remedies available by reason of any fraud or intentional wrongdoing.

**SEC. 11.** Section 13113.5 is added to the Probate Code, to read:

**13113.5.** (a) If the transferee's action or inaction increased the value of property returned to the estate or decreased the estate's obligations, the personal representative shall reimburse the transferee by the same amount. Actions or inaction that increase the value of returned property or decrease the estate's obligations include, but are not necessarily limited to, the following actions:

(1) A payment toward an unsecured debt of the decedent.

(2) A payment toward a debt secured against the returned property.

(3) A significant improvement of the returned property that increased the fair market value of the property.

(b) If the transferee's action or inaction decreased the value of property returned to the estate or increased the estate's obligations, the transferee is personally liable to the estate for that amount. Actions or inaction that decrease the value of the returned property or increase the estate's obligations include, but are not necessarily limited to, the following actions or inaction:

(1) An action or inaction that resulted in a lien or encumbrance being recorded against the property.

(2) The receipt of income from the property, if that income would have accrued to the estate had the property not been transferred to the transferee.

(c) The personal representative shall provide the transferee a written statement of any reimbursement or liability under this section, along with a statement of the reasons for the reimbursement or liability.

(d) For the purposes of Section 11420, reimbursement of the transferee under subdivision (a) shall be deemed an expense of administration.

(e) In the event that the transferee and the personal representative cannot agree on the reimbursement or liability due under this section, the transferee or personal representative may petition the court for an order determining the amount of the reimbursement or liability. In making a decision under this subdivision, the court should consider the surrounding circumstances, including whether the parties acted in good faith and whether a particular result would impose an unfair burden on the transferee or the estate.

**SEC. 12.** Section 13114.5 is added to the Probate Code, to read:

**13114.5.** If transferred property is returned to the estate under Sections 13110.5 or 13111, the value of that property shall be included in the total value of the estate, for all purposes.

**SEC. 13.** Section 13117 of the Probate Code is amended to read:

**13117.** If the court finds that a person to whom payment, delivery, or transfer of the decedent's property has been made under this chapter has acted reasonably and in good faith under the circumstances as known to the person, the court may, in its discretion, excuse the person from liability to pay interest, in whole or in part, under paragraph (2) of subdivision (a) of Section 13111, if it would be equitable to do so.

**SEC. 14.** Section 13202.5 is added to the Probate Code, to read:

**13202.5.** For the purposes of this chapter, the following terms have the following meanings:

(a) "Transferee" means a person designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202.

(b) "Transferred property" means property transferred to a transferee pursuant to a certified copy of an affidavit issued under Section 13202.

(c) "Unsecured debts" includes, but is not limited to, a decedent's funeral expenses, expenses of a decedent's last illness, and wage claims.

**SEC. 15.** Section 13204 of the Probate Code is amended to read:

**13204.** (a) A transferee is personally liable to the extent provided in this section for the unsecured debts of the decedent. That debt may be enforced against the transferee in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the transferee may assert any defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7. Section 366.2 of the Code of Civil Procedure applies in an action under this section.

(b) The personal liability under subdivision (a) shall not exceed the fair market value of the transferred property at the time of the issuance of the certified copy of the affidavit under Section 13202, less the amount of any liens and encumbrances on the transferred property at that time, and less the amount of any payment made pursuant to subdivision (a) of Section 13205.

(c) The transferee is not liable under this section if the transferee has satisfied the requirements of Section 13204.5, 13205.5, or 13206.

**SEC. 16.** Section 13204.5 is added to the Probate Code, to read:

**13204.5.** (a) If proceedings for the administration of the decedent's estate are commenced, a transferee is personally liable to the estate for a share of the decedent's unsecured debts.

(b) In calculating the transferee's share of liability under subdivision (a), the abatement rules provided in Part 4 (commencing with Section 21400) of Division 11 shall be applied, using all of the following assumptions:

(1) Transferred property under this chapter shall be treated as if it had remained in the estate for administration.

(2) Any unsecured debts of the decedent that were paid by the transferee pursuant to Section 13204 shall be treated as if they were claims made against the decedent's estate.

(c) The personal representative shall provide a written statement of liability to the transferee, which specifies the amount that must be paid to the estate.

(d) The transferee is personally liable to the estate for the amount specified in the statement of liability. Any amount that the transferee paid pursuant to Section 13204 or 13205 shall be credited against the amount that the transferee owes the estate under this subdivision. If the amount that the transferee paid pursuant to Section 13204 or 13205 exceeds the amount specified in the written statement of liability, the estate shall reimburse the difference to the transferee. For the purposes of Section 11420, that reimbursement shall be deemed an expense of administration.

(e) The reasonable cost of proceeding under this section shall be reimbursed as an extraordinary service under Sections 10801 and 10811. The transferee is liable for the payment of that cost, which shall be separately identified in the statement of liability.

(f) The transferee is not liable under this section if the transferee has satisfied the requirements of Section 13205.5 or 13206.

**SEC. 17.** Section 13205 of the Probate Code is amended to read:

**13205.** (a) A transferee is personally liable to any person having a superior right to transferred property by testate or intestate succession from the decedent. Except as provided in subdivision (d), the personal liability established by this subdivision shall not exceed the sum of the following, less the amount of any payment made pursuant to Section 13204 or 13204.5:

(1) The fair market value at the time of the issuance of the certified copy of the affidavit under Section 13202 of the transferred property, less the amount of any liens and encumbrances on the transferred property at that time.

(2) Income received from the property, if that income would have accrued to the estate had the property not been transferred to the transferee.

(3) If the property has been disposed of, interest on the fair market value of the transferred property from the date of disposition at the rate of 7 percent per annum. For the purposes of this paragraph, "fair market value of the transferred property" means the fair market value of the transferred property, determined as of the time of the disposition of the property, less the amount of any liens and encumbrances on the property at the time the certified copy of the affidavit was issued.

(b) In addition to any other liability the transferee has under this section and Sections 13204, 13204.5, 13206, and 13208, if the transferee fraudulently executed or filed the affidavit under this chapter, the transferee is liable to the person having a superior right to that property by testate or intestate succession from the decedent for three times the fair market value of the transferred property. For the purposes of this subdivision, the "fair market value of the transferred property" is the fair market value of the transferred property determined as of the time the certified copy of the affidavit was issued under Section 13202, less any liens and encumbrances on the transferred property at that time.

(c) An action to impose liability under this section is forever barred three years after the certified copy of the affidavit is issued under Section 13202, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

(d) The transferee is not liable under this section if the transferee has satisfied the requirements of Section 13205.5 or 13206.

**SEC. 18.** Section 13205.5 is added to the Probate Code, to read:

**13205.5.** (a) If proceedings for the administration of the decedent's estate are commenced, a transferee may voluntarily return transferred property to the decedent's estate for administration.

(b) The property to be restored to the estate under this section shall be reduced or increased as provided in Section 13208.5.

**SEC. 19.** Section 13206 of the Probate Code is repealed.

**SEC. 20.** Section 13206 is added to the Probate Code, to read:

**13206.** (a) If property is transferred to a transferee under this chapter, and the decedent's personal representative later determines that another person has a superior right to the property by testate or intestate succession from the decedent, the personal representative may request that the transferred property be restored to the estate. Subject to subdivisions (b), (c), (d), (e), and (g) if the personal representative makes that request, the transferee is liable for all of the following:

(1) If the transferee still has the transferred property, restitution of the transferred property to the decedent's estate.

(2) If the transferee no longer has the transferred property, restitution to the decedent's estate of the fair market value of the transferred property plus interest from the date of disposition at the rate of 7 percent per annum on the fair market value of the transferred property. For the purposes of this paragraph, the "fair market value of the transferred property" is the fair market value of the transferred property, determined as of the time of the disposition of the transferred property, less the amount of any liens and encumbrances on the transferred property at the time the certified copy of the affidavit was issued.

(b) Subject to subdivision (d), if the transferee fraudulently executed or filed the affidavit under this chapter, the transferee is liable under this section for restitution of three times the fair market value of the transferred property. For the purposes of this subdivision, the "fair market value of the transferred property" is the fair market value of the transferred property, determined as of the time the certified copy of the affidavit was issued, less the amount of any liens and encumbrances on the property at that time. Restitution provided under this subdivision shall first be used to pay the estate's cost of proceeding under this section, with the remainder paid to the person who has a superior right to the property by testate or intestate succession.

(c) Subject to subdivision (d), if the transferee made a significant improvement to the transferred property in the good faith belief that the transferee was the successor of the decedent to that property, the transferee is liable for whichever of the following the decedent's estate elects:

(1) The restitution of the transferred property to the estate of the decedent.

(2) The restoration to the decedent's estate of the fair market value of the transferred property, determined as of the time of the issuance of the certified copy of the affidavit under Section 13202, less the amount of any liens and encumbrances on the transferred property at that time, together with interest on the net amount at the rate of 7 percent per annum running from the date of the issuance of the certified copy of the affidavit.

(d) The property and amount required to be restored to the estate under this section shall be reduced or increased as provided in Section 13208.5.

(e) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the decedent.

(f) An action to enforce the liability under this section is forever barred three years after the certified copy of the affidavit is issued under Section 13202, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

(g) The transferee is not liable under subdivision (a) if the transferred property was returned to the estate under Section 13205.5.

**SEC. 21.** Section 13207 of the Probate Code is repealed.

**SEC. 22.** Section 13208 of the Probate Code is amended to read:

**13208.** The remedies available under Sections 13204 to 13206, inclusive, are in addition to any remedies available by reason of any fraud or intentional wrongdoing.

**SEC. 23.** Section 13208.5 is added to the Probate Code, to read:

**13208.5.** (a) If the transferee's action or inaction increased the value of property returned to the estate or decreased the estate's obligations, the personal representative shall reimburse the transferee by the same amount. Actions or inaction that increase the value of returned property or decrease the estate's obligations include, but are not necessarily limited to, the following actions:

(1) A payment toward an unsecured debt of the decedent.

(2) A payment toward a debt secured against the returned property.

(3) A significant improvement of the returned property that increased the fair market value of the property.

(b) If the transferee's action or inaction decreased the value of property returned to the estate or increased the estate's obligations, the transferee is personally liable to the estate for that amount. Actions or inaction that decrease the value of the returned property or increase the estate's obligations include, but are not necessarily limited to, the following actions or inaction:

(1) An action or inaction that resulted in a lien or encumbrance being recorded against the property.

(2) The receipt of income from the property, if that income would have accrued to the estate had the property not been transferred to the transferee.

(c) The personal representative shall provide the transferee a written statement of any reimbursement or liability under this section, along with a statement of the reasons for the reimbursement or liability.

(d) For the purposes of Section 11420, reimbursement of the transferee under subdivision (a) shall be deemed an expense of administration.

(e) In the event that the transferee and the personal representative cannot agree on the reimbursement or liability due under this section, the transferee or personal representative may petition the court for an order determining the amount of the reimbursement or liability. In making a decision under this subdivision, the court should consider the surrounding circumstances, including whether the parties acted in good faith and whether a particular result would impose an unfair burden on the transferee or the estate.

**SEC. 24.** Section 13209 is added to the Probate Code, to read:

**13209.** If transferred property is returned to the estate under Sections 13205.5 or 13206, the value of that property shall be included in the total value of the estate, for all purposes.

**SEC. 25.** Section 13211 of the Probate Code is amended to read:

**13211.** If the court finds that a person designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 has acted reasonably and in good faith under the circumstances as known to the person, the court may, in its discretion, excuse the person from liability to pay interest, in whole or in part, under paragraph (2) of subdivision (a) of Section 13206 or paragraph (2) of subdivision (c) of Section 13206, if it would be equitable to do so.

**SEC. 26.** Section 13551 of the Probate Code is amended to read:

**13551.** The liability imposed by Section 13550 shall not exceed the fair market value at the date of the decedent's death, less the amount of any liens and encumbrances, of the total of the following:

(a) The portion of the one-half of the community and quasi-community property belonging to the surviving spouse under Sections 100 and 101 that is not exempt from enforcement of a money judgment and is not administered in the estate of the deceased spouse.

(b) The portion of the one-half of the community and quasi-community property belonging to the decedent under Sections 100 and 101 that passes to the surviving spouse without administration under this part.

(c) The separate property of the decedent that passes to the surviving spouse without administration under this part.